the terms of the agreement, the owners acquired a right to immediate possession of the goods without further notice, so that they could sustain an action in conversion.

As I have said, there is no ambiguity in clause 9 of the hire-purchase agreement. The finding of the learned judge in the court below that under clause 9 of the agreement the hiring *ipso facto* terminated upon default, by which he meant that no formal notice of termination of hiring prior to taking repossession of the car was necessary, has not been challenged in this court, nor has it been argued that the appellant is entitled to any equitable relief. In any event, as the learned trial judge said, the appellant cannot rely on the aid of equity. In the words of Harman L.J. in *Campbell Discount Co. v. Bridge,*[3] equitable principles are rather too often bandied about in common law courts as though the Chancellor still had only the length of his own foot to measure when coming to a conclusion. It seems to me that all that this court can do is to commiserate with the appellant for getting himself into a position whereby he lost the car as well as all the money he had paid for it and to leave it to him to ruminate over the question as to whether he himself was not entirely to blame for bringing about that situation.

Ong Hock Thye C.J. (Malaya) and Ali F.J. concurred.

Appeal dismissed.

Solicitors: *N. Ramachandran; Donaldson & Burkinshaw.*

UVAL & ANOR. v. ZAINAL

[F.C. (Ong Hock Thye C.J. (Malaya), Gill & Ali F.JJ.) September 10, 1969]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 55 of 1969]

Negligence — Highway — Accident — Apportionment of blame — Whether appellate court should interfere with apportionment of liability by trial judge.

This was an appeal against the decision of the High Court in respect of an accident between a motor-cycle of which the appellants were the rider and pillion passenger and a taxi driven by the respondent. The learned trial judge found that the drivers of both vehicles were equally blameworthy. The plaintiffs appealed.

Held, dismissing the appeal: the learned trial judge was correct in deciding that the appellants were partly to blame for the accident and the appellate court would not interfere with his apportionment of the blame as there was no error of law or of fact in his judgment.

Cases referred to:—

(1) *Brown* v. *Thompson* [1968] 2 All E.R. 708, 711.

(2) *Ingram* v. *United Automobile Service Ltd.* [1943] 1 K.B. 612, 614.

(3) *The Macgregor* [1943] A.C. 197.

FEDERAL COURT

D.H. Murphy (*David S.H. Tay* with him) for the appellants.

Thara Singh Sidhu for the respondent.

Cur. Adv. Vult.

Ong Hock Thye C.J. (Malaya) (delivering the judgment of the court): The appellants were the rider and pillion passenger on a motor-cycle when a taxi driven by the respondent ran into it from behind. In the High Court at Seremban the learned judge found as a fact that the drivers of both vehicles were equally blameworthy. He awarded damages in the sum of $1,550 to the first appellant and $5,560 to the second appellant, whose main injury resulted in a one-inch permanent shortening of the right leg and wasting of the muscles.

This appeal raises a number of grounds, all of which were against the findings of fact.

The accident occurred at about 1 p.m. on July 5, 1963 at the 4¼ mile, Mantin Pass, after a left-hand bend of the road. The engine of the motor-cycle had failed. While remaining seated on the saddle the rider was trying to restart the machine while it was in motion. His passenger was, at the same time, from his pillion seat, using his legs to propel the motor-cycle forward. The learned judge, on the whole of the evidence, came to the conclusion that the joint efforts of the appellants most probably resulted in their failure to maintain proper balance, so that the machine, being in motion, must have followed an unsteady course. The accident, in his opinion, could not have happened had they stopped by the roadside to restart the engine. In our opinion the inferences drawn by the learned judge were eminently reasonable and probable. We, too, would have come to the same conclusion. As regards the relative credibility of the witnesses the judge had seen and heard them and we are in no position to substitute our opinion for his.

As regards the apportionment of blame, we would follow the principle enunciated by the Court of Appeal in England in *Brown v. Thompson,*[1] affirming, among others, du Parcq L.J. in *Ingram v. United Automobile Service Ltd.,*[2] who said:—

"It would seem to follow from the decision of the House of Lords in *The Macgregor*[3] that this court should not interfere with the apportionment of liability made by the judge at the trial unless there is some error of law or of fact in his judgment. I come to that conclusion particularly in view of the observations of Lord Wright in that case. In the present case the matter is perhaps one of academic interest because I

should not have been prepared to differ from the judge in the apportionment that he has made, although, if I had tried the case, I should not necessarily have apportioned the damages in exactly the same way. This court has never taken the view that it should alter an apportionment unless there was something seriously wrong with it."

We would dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Sault, Keith Sellar & Co.*

HOE GAN TAI v. FONG CHEE YAN

[F.C. (Azmi L.P., Suffian & Ali F.JJ.) September 19, 1969]

[Penang—Federal Court Civil Appeal No. X.19 of 1969]

Family Law — Divorce — Cruelty — Evidence of petitioner uncontradicted — Whether petitioner has discharged onus.

In this case the learned trial judge had dismissed a petition for divorce on the ground of cruelty, as he held that the petitioner had not proved that she had a reasonable apprehension for her safety or of danger of bodily hurt. In coming to this decision he rejected the evidence of the petitioner that she had been physically assaulted by the respondent. The petitioner appealed.

Held: (1) the petitioner's evidence in such cases should normally be accepted in the absence of contradiction and in the absence of any element of inherent improbability;

(2) there was uncontradicted evidence in this case not only of physical violence but of a long continued series of acts persisted in by the husband causing not just a reasonable apprehension of danger to the appellant's limb and health but actually causing such danger;

(3) the petitioner had therefore proved beyond reasonable doubt cruelty on the part of her husband and therefore there should be a decree of dissolution of marriage.

Cases referred to:—

(1) *Gollins* v. *Gollins* [1964] A.C. 644; [1963] 2 All E.R. 966; affirming [1964] P. 32; [1962] 3 All E.R. 897, 899.

(2) *Saunders* v. *Saunders* [1965] 2 W.L.R. 32.

(3) *Public Prosecutor* v. *Mohamed Ali* [1962] M.L.J. 257.

The following authorities were also cited in argument: *Edwards* v. *Edwards* 106 Sol. J. 590; *Railton* v. *Railton* 106 Sol. J. 454; *Finch* 12 Cr. App. R. 77; *Wright* v. *Wright* [1960] P. 85; *King* v. *King* [1953] A.C. 124; *Waters* v. *Waters* [1956] 1 All E.R. 432; [1956] P. 344; *Henderson* v. *Henderson & Crellin* [1944] A.C. 49, 53; *Moss* v. *Moss* [1916] P. 155, 162; *Benton* v. *Benton* [1958] P. 12 at pp. 19, 24, et seq; *Le Brocq* v. *Le Brocq* [1964] 1 W.L.R. 1085, 1095; *Rayden* on Divorce, 8th ed., pp. 120 et seq.

FEDERAL COURT

Lim Kean Siew (*Miss Pamela Ong* with him) for the appellant.

Respondent absent.

Cur. Adv. Vult.

Suffian F.J.: This is an appeal against the dismissal by the High Court in Penang of the wife-appellant's petition for divorce on the ground of cruelty.

The learned trial judge found that the evidence did not show that there was ground for the petitioner to have a reasonable apprehension for her safety or of danger of bodily hurt and that the petitioner had therefore failed to satisfy him beyond reasonable doubt as to her husband's cruelty.

The evidence in the lower court was brief. This was because, the petition being undefended, the petitioner was not cross-examined and she called only one other witness. If the petition had been defended, no doubt she would have been cross-examined and her counsel would have called other witnesses to amplify her evidence and to fill in any gaps disclosed by the cross-examination. The other witness was a doctor called to prove injuries alleged to have been caused by her husband on two occasions, once in March and once again in April, 1967.

The evidence was as follows. The parties married on 25th September, 1956, and there are two children of the marriage aged about 11 and 5.

At the time of the marriage the husband was a goldsmith. In 1958 he ceased to be a goldsmith and the wife, who worked as a seamstress, taught him to be a cutter for two years. He was not interested in the work. So the wife financed him in a partnership with her nephew in a dress-selling shop. The wife had been working since the age of 16 and contributed over a thousand dollars from her savings towards her husband's capital, finding the rest from her relatives. She financed him in order to make him feel independent and the business was registered in his name. But her nephew withdrew five months later, because the business did not pay. Her husband used to go to work late, took no interest in the business and paid frequent visits to the coffeeshops. In 1966 the wife stopped helping in the shop, the business slackened and she suggested to her husband to close down the business and he agreed.

He did not look for a job. He withdrew money from the bank and from the Post Office, money which had been paid by customers. The appellant had frequent quarrels over money with her husband.

On 28th February, 1967, after a quarrel over money, the husband threatened to throw acid at the appellant. The appellant was frightened and reported to the police. In this report she said that, while she was sewing,